

1 Gregory J. Yu (State Bar No. 133955)  
2 GLOBAL LAW GROUP  
3 2015 Pioneer Court, Suite P-1  
4 San Mateo, CA 94403  
5 Telephone: (650) 570-4140  
6 Facsimile: (650) 570-4142  
7 E-mail: glgroup [at] inreach [dot] com

8 Attorney for Plaintiffs and Proposed Class and Subclasses

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 KINDERSTART.COM LLC, a California  
15 limited liability company, on behalf of itself and  
16 all others similarly situated,  
17 Plaintiffs,  
18 v.  
19 GOOGLE, INC., a Delaware corporation,  
20 Defendant.

21 Case No. C 06-2057 JF

22 **PLAINTIFF'S ADMINISTRATIVE  
MOTION UNDER LOCAL RULE 7-7(b)  
TO CONTINUE DEFENDANT'S  
SPECIAL MOTION TO STRIKE  
PURSUANT TO CCP § 425.16  
CALENDARED FOR JUNE 30, 2006**

23 **FACTUAL AND PROCEDURAL BACKGROUND**

24 On May 2, 2006, Defendant Google noticed and filed its Special Motion ("Anti-SLAPP  
25 Motion") under California Code of Civil Procedure (CCP § 425.16) to strike Counts One, Eight  
26 and Nine of the First Amended Class Action Complaint ("FACAC") of Plaintiff KinderStart.com  
27 LLC ("KSC"). Count Eight is for Google's defamation and libel by means of PageRank™  
28 devaluation of websites. During the week of June 2, 2006, Plaintiff verbally informed Defendant  
of its need for discovery in connection with the Anti-SLAPP Motion. On June 9, 2006, Plaintiff  
KSC timely filed its opposition with a conditional request for a continuance of the hearing and  
discovery by KSC of facts exclusively within Google's control essential to KSC's case in chief  
on Count Eight. On June 13, 2006, Plaintiff delivered a list of information required of Google to  
form the factual foundation for Plaintiffs' burden to demonstrate the probability of prevailing on  
PLAINTIFFS' MOTION UNDER L.R. 7-7  
TO CONTINUE CCP § 425.16 MOTION

1 the merits of Count Eight. On June 15, 2006, Google declined this request but did not promise a  
 2 date certain to comply or respond. *Declaration of Gregory J. Yu*, attached hereto as Exhibit 1  
 3 (“*Yu Dec.*”), ¶¶ 2-4. On June 16, 2006, KSC requested stipulations of Google to (1) allow  
 4 acceleration of a discovery motion to allow KSC to conduct discovery on PageRank and (2)  
 5 continue the anti-SLAPP motion hearing date until the discovery motion and discovery by KSC  
 6 could be completed. Google declined both stipulations. *Id.*, ¶¶ 5-6.

7 Accordingly, Plaintiff KSC makes this administrative motion under Civil Local Rule  
 8 (“L.R.”) 7-7(b)(2)(B) for the continuance of Defendant’s Anti-SLAPP Motion now calendared  
 9 for June 30, 2006. This motion is made after the opposition to the defendant’s motion where  
 10 such motion is essentially one seeking summary judgment relief under L.R. 56-1. This  
 11 administrative motion is concurrently filed with (1) Motion for Specified Discovery on  
 12 Defamation and Libel, and (2) Motion under L.R. 6-3 to Shorten Time for the discovery motion.

13 **GROUND FOR THIS MOTION**

14 Under California Code of Civil Procedure (“CCP”) § 425.16(b)(1), an anti-SLAPP  
 15 motion fails if “the plaintiff has established that there is a probability that the plaintiff will  
 16 prevail on the claim.” As to all parties to an action, “[a]ll discovery proceedings in the action  
 17 shall be stayed upon the filing of a notice of motion made pursuant to this section.” *Id.*, §  
 18 425.16(g). “The court, on noticed motion and for good cause shown, may order that specified  
 19 discovery be conducted notwithstanding this subdivision.” *Id.* California courts apply this  
 20 exception to the discovery stay if the requirements are met under the statute. *See e.g., Tuchscher*  
 21 *Development Enterprises, Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219,  
 22 1247, 132 Cal. Rptr. 2d 57 (2003).

23 In federal court, however, anti-SLAPP is under a different regime. Within the Ninth  
 24 Circuit, discovery cannot be blocked by a trial court in a summary proceeding as an anti-SLAPP  
 25 procedure. In *Metabolife International, Inc. v. Wornick*, 264 F. 3d 832, 846 (9th Cir. 2001), the  
 26 court held: “Because the discovery-limiting aspects of § 425.16(f) and (g) collide with the  
 27 discovery-allowing aspects of Rule [Fed. R. Civ. Pro.] 56, these aspects of subsections (f) and  
 28 (g) cannot apply in federal court.” (emphasis added) (*quoting Rogers v. Home Shopping*

1      *Network, Inc.*, 57 F. Supp. 2d 973, 982 (C.D. Cal. 1999)). Overall, the Ninth Circuit in  
 2      *Metabolife* followed the Supreme Court's interpretation of Rule 56(f) that discovery is required  
 3      "where the moving party has not had the opportunity to discover information that is essential to  
 4      its opposition." *Id.*, 264 F.3d at 846 (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
 5      n. 5, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)).

6           Plaintiffs' concurrently filed Motion for Specified Discovery argues that the means and  
 7      method of computing PageRank for [www.kinderstart.com](http://www.kinderstart.com) and all the Websites of other Class  
 8      members are formulated and performed under Google's exclusive control. Plaintiff has no  
 9      public access to such information. Therefore, a hearing and decision to grant Defendant's Anti-  
 10     SLAPP Motion as to Count Eight of the FACAC, defamation and libel, prior to gainful  
 11     discovery by Plaintiff of key facts solely within Google's possession, violates Rule 56. Under  
 12     *Metabolife*, the Ninth Circuit would surely conclude that the pending Anti-SLAPP motion is  
 13     essentially one seeking summary judgment that requires discovery by the non-moving party.

14           This motion was also necessary because after Plaintiff KSC requested Defendant Google  
 15     for a stipulation to continue the hearing date for the Anti-SLAPP Motion, Google declined to so  
 16     stipulate. See *Yu Dec.*, ¶ 5.

## 17     **CONCLUSION**

18           In light of the above, the accompanying declaration of Gregory J. Yu, the documents and  
 19     pleadings on file herein, Plaintiff KSC respectfully requests the Court to continue the Anti-  
 20     SLAPP Motion from June 30, 2006 to a later date to first allow for a hearing on Plaintiff's  
 21     pending motion for discovery of PageRank concerning the defamation and libel count, as well as  
 22     completion of proper, timely and meaningful discovery by Plaintiff for such specified purpose.

23     Dated: June 16, 2006

GLOBAL LAW GROUP

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 25           By: /s/ Gregory J. Yu  
 26           Gregory J. Yu, Esq.  
 27           Attorney for Plaintiff KinderStart.com LLC and  
               for the proposed Class and Subclasses